OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18063310
ELECTRO MAGNETIC TEST INC.	Date Issued: June 12, 2019
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)

OPINION

Representing the Parties:

For Appellant: Jay Gandhi, President

For Respondent: Gi Nam, Tax Counsel

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

P. KUSIAK, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Electro Magnetic Test, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB) denying its claim for refund of \$2,082.10¹ for the 2017 tax year.

Appellant waived its right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has shown reasonable cause for the abatement of the mandatory electronic payment (e-pay) penalties.

FACTUAL FINDINGS

1. On January 15, 2016, appellant remitted an estimate tax payment of \$23,113 for the 2015 tax year. On February 1, 2016, the FTB issued appellant an Electronic Funds Transfer (EFT) Program Mandatory Participation Notice (Mandatory EFT Notice) advising appellant that all future payments must be made by EFT. In response to the Mandatory

¹ This amount reflects two mandatory electronic payment (e-pay) penalties in the amounts of \$1,158.40 and \$923.70 that together total \$2,082.10. The FTB imposed these e-pay penalties after appellant remitted two payments of \$11,584, and \$9,237 by paper checks dated August 24, 2017. Appellant's letter of appeal requested a refund of this amount.

- EFT Notice, appellant provided a completed Authorization for Electronic Funds Transfer Form (EFT Authorization Form) that the FTB received on February 5, 2016.
- 2. Appellant made payments by paper check, remitting \$7,425 and \$10,000 on June 15, 2016, and \$12,110 on July 8, 2016. The FTB imposed separate e-pay penalties for these non-electronic payments. Records of the FTB indicate that on July 11, 2016, appellant's president was advised telephonically that appellant must make all future payments using EFT. In addition, in correspondence dated July 25, 2016, appellant acknowledged the EFT payment requirement and requested an abatement of the e-pay penalties because it was unaware of the requirement previously.
- 3. The FTB abated the e-pay penalties for the June 15, 2016, and July 8, 2016, non-electronic payments because appellant had shown reasonable cause.
- 4. For the 2017 tax year, appellant made two estimate payments of \$11,584, and \$9,237 by paper checks dated August 24, 2017. The FTB imposed e-pay penalties in the amounts of \$1,158.40 and \$923.70, respectively, totaling \$2,082.10.
- 5. In a letter dated September 11, 2017, appellant requested that the FTB waive the e-pay penalties and, using FTB Form 2924, *Reasonable Cause Business Entity Claim for Refund*, dated September 21, 2017, claimed a refund of \$2,086.² Appellant asserted that it erroneously remitted the estimated tax payment by check, even though it was not due until March 31, 2018. Appellant asserted it did not know electronic payments were required. It also claimed to be a very small business and had enrolled for the on-line payment. The FTB accepted FTB Form 2924 as an informal claim for refund. Appellant made an electronic payment of \$2,086 on September 21, 2017, for the two e-pay penalties for the 2017 tax year.
- 6. The FTB did not issue a denial of the claim for refund within six months following appellant's claim for refund on September 21, 2017. However, pursuant to R&TC section 19331, appellant deemed its refund claim to have been denied and the instant appeal followed.

² As indicated in footnote 1, appellant's letter of appeal reduced the amount of the refund claimed to \$2,082.10.

DISCUSSION

R&TC section 19011, subdivision (a), requires a corporation to remit all future payments electronically if: (1) it makes an estimated tax or extension payment in excess of \$20,000 beginning on or after January 1, 1995; or (2) it files an original return with a tax liability over \$80,000 for a taxable year beginning on or after January 1, 1995. An electronic funds transfer means "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account." (R&TC, § 19011, subd. (f)(1).)

R&TC section 19011, subdivision (c), provides that a taxpayer that does not comply with the e-pay requirement shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make the payment as required was due to reasonable cause and was not the result of willful neglect. A taxpayer required to electronically remit payment to the FTB pursuant to R&TC section 19011 may elect to discontinue making payments electronically where the threshold requirements set forth in paragraphs (1) and (2) of subdivision (a) were not met for the preceding taxable year. (R&TC, § 19011, subd. (b).)

Although R&TC section 19011 does not define "reasonable cause," the Board of Equalization (BOE) has addressed what is considered "reasonable cause" within the context of the late-filing penalty. To establish reasonable cause, a taxpayer must show that the failure to comply occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Tons*, 79-SBE-027, 1979 WL 4068.) The taxpayer bears the burden of proving reasonable cause to excuse the penalty. (*Appeal of Schwyhart*, 75-SBE-035, 1975 WL 3519.) Ignorance of the law does not establish reasonable cause. (*Appeal of Forbes*, 67-SBE-042, 1967 WL 1384.) A taxpayer does not exercise ordinary business care and prudence when it fails to acquaint itself with the requirements of California tax law. (*Appeal of Diebold, Inc.*, 83-SBE-002, 1983 WL 15389.)

It is undisputed that appellant made two estimate tax payments for the 2017 tax year of \$11,584, and \$9,237 by paper checks dated August 24, 2017.

Appellant was first required to make EFT payments following appellant's January 15, 2016 estimate tax payment of \$23,113 for the 2015 tax year. Following receipt of these

payments, the FTB advised appellant to make future payments by EFT. By executing the EFT Authorization Form, received by the FTB on February 5, 2016, appellant agreed to allow the FTB to debit its bank account for all tax payments that are required to be made by EFT.

When appellant subsequently made estimate tax payments by paper checks for the 2016 tax year, the FTB again advised appellant in another Mandatory EFT Notice and in a telephone conference with appellant's president, that appellant must make all payments using EFT. The FTB also imposed e-pay penalties for those payments. In correspondence of July 25, 2016, appellant requested an abatement of the e-pay penalties because it was unaware of the requirement previously. The FTB abated e-pay penalties for 2016 tax year on the grounds of reasonable cause.

Despite appellant's knowledge of the requirement to make its tax payments using EFT, appellant made tax payments for the 2017 tax year by paper check, failing to act as an ordinarily intelligent and prudent businessman would have done under similar circumstances. (*Appeal of Tons, supra*, 1979 WL 4068.) We find that appellant has not established that its failure to make its estimate tax payments for the 2017 tax year by EFT was for reasonable cause and not the result of willful neglect.

Appellant argues that it complied with its EFT requirements when it followed the 2017 Instructions for the Form 100-ES, Section F, by making the two estimate payments of \$11,584 and \$9,237 for the 2017 tax year because each installment payment was less than \$20,000 and its total payments of \$20,821 did not exceed \$80,000, it was not required to make tax payments by EFT. Appellant's arguments are based on a misreading of the requirements and are without merit.

As indicated above, appellant was first required to make EFT payments following appellant's January 15, 2016 estimate tax payment of \$23,113 for the 2015 tax year. It was this payment that established the requirement for appellant to make all future payments via EFT, pursuant to R&TC section 19011, subdivision (a). Appellant's position relies on a misreading of the instructions for the Form 100-ES, Section F. These same provisions also indicate that: "Once a corporation meets the threshold, all *subsequent payments regardless of amount, tax type or taxable year* must be remitted electronically to avoid a 10% non-compliance penalty." (Emphasis added.) Furthermore, appellant could not elect to discontinue making electronic

payments for the 2017 tax year because it met the threshold requirements during the preceding taxable year. (R&TC, § 19011, subd. (b).)

Appellant asserts that it exercised ordinary business care and prudence by making early estimated tax payments for the 2017 tax year. However, R&TC section 19011, subdivision (c), imposes the e-pay penalty when a taxpayer subject to the EFT requirement fails to make electronic payments. Therefore, appellant's early tax payments do not establish a basis for the abatement of the e-pay penalties.

Lastly, we address appellant's argument that it is entitled to an abatement of the e-pay penalties because it has a history of making timely payments in the past. The timeliness of prior payments is irrelevant with respect to the e-pay penalty, which focuses on the mode of payment, rather than its timeliness. Appellant has failed to establish that its failure to make payments for the 2017 tax year by EFT was due to reasonable cause and not the result of willful neglect. As a result, there is no basis to abate the e-pay penalties of \$2,082.10 for the 2017 tax year.

HOLDING

Appellant has failed to demonstrate that it is entitled to an abatement of the e-pay penalties.

DISPOSITION

The deemed action of the FTB denying appellant's claim for refund is sustained.

O Cusigned by

Patrick J. Kusiak

Administrative Law Judge

We concur:

DocuSigned by:

Sara A. Hosey

DocuSigned by:

Administrative Law Judge

Andrew J. Kwee

Administrative Law Judge